

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY W. STEWART,

Petitioner,

v.

J. MACOMBER,

Respondent.

No. 1:22-cv-01121-ADDA-EPG (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DIRECTING CLERK OF COURT
TO CLOSE CASE, AND DECLINING TO
ISSUE A CERTIFICATE OF
APPEALABILITY

(ECF No. 10)

Petitioner Gregory W. Stewart is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On September 16, 2022, the assigned Magistrate Judge issued findings and recommendations that recommended dismissing the petition as an unauthorized successive petition. (ECF No. 10.) After the court re-mailed a copy of the findings and recommendations to Petitioner, Petitioner filed timely objections. (ECF No. 12.) In his objections, Plaintiff lists over two dozen habeas corpus petitions he has filed in the Eastern District. (*Id.* at 2–3.) He also argues that the Ninth Circuit inappropriately dismissed an appeal he filed in 2009 in case number 08-17746. (*Id.* at 4.) The Ninth Circuit dismissed that appeal as duplicative of a second appeal in case number 08-15693, but Petitioner claims that there is no docket associated with 08-15693. *Id.*

1 Petitioner's argument does not change the fact that he has filed numerous successive petitions for
2 habeas corpus and that he must first obtain permission from the Court of Appeals before bringing
3 such a petition before this Court.

4 Having found that Petitioner is not entitled to habeas relief, the Court now turns to
5 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
6 has no absolute entitlement to appeal a district court's denial of his petition, and an appeal is only
7 allowed in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335–36 (2003); 28 U.S.C.
8 § 2253. Where, as here, the Court denies habeas relief on procedural grounds without reaching
9 the underlying constitutional claims, the Court should issue a certificate of appealability “if jurists
10 of reason would find it debatable whether the petition states a valid claim of the denial of a
11 constitutional right and that jurists of reason would find it debatable whether the district court was
12 correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a plain
13 procedural bar is present and the district court is correct to invoke it to dispose of the case, a
14 reasonable jurist could not conclude either that the district court erred in dismissing the petition or
15 that the petitioner should be allowed to proceed further.” *Id.*

16 In the present case, the Court finds that reasonable jurists would not find the Court's
17 determination that the petition should be dismissed debatable or wrong, or that Petitioner should
18 be allowed to proceed further. Therefore, the Court declines to issue a certificate of appealability.

19 Accordingly,

- 20 1. The findings and recommendations issued on September 16, 2022, (ECF No. 10),
21 are adopted in full;
- 22 2. The petition for writ of habeas corpus is dismissed;

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1 3. The Clerk of Court is directed to close the case; and

2 4. The Court declines to issue a certificate of appealability.

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5 IT IS SO ORDERED.

6 Dated: March 7, 2023


UNITED STATES DISTRICT JUDGE